



September 18, 2000

Mr. Michael Hernandez
Bracewell & Patterson, L.L.P.
Attorneys at Law
800 One Alamo Center
106 S. St. Mary's Street
San Antonio, Texas 78205-3603

OR2000-3595

Dear Mr. Hernandez:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139173.

The City of Del Rio (the "city"), which your law firm represents, received a request for a copy of the report related to a sexual harassment investigation. You claim that portions of the information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted documents contain references to family members of city employees. If these city employees have properly elected to have this type of information kept confidential under section 552.024 of the Government Code, then the city must withhold family member information pursuant to section 552.117(1) of the Government Code. *See* Open Records Decision Nos. 622 (1994), 455 (1987).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common law right of privacy is incorporated into the Public Information Act by section 552.101. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). The *Industrial Foundation* court held that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common law privacy to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness

statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

We conclude that the submitted information is a summary of the sexual harassment investigation. You state that there is no other adequate summary of the investigation. Therefore, we agree with the city that the submitted information must be released to the requestor, with the victims' and witnesses' names and identifying information redacted under section 552.101. We have marked those portions of the summary that must be withheld from required public disclosure under section 552.101. The remaining information must be released to the requestor.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

¹The city also seeks to withhold "a number of unsubstantiated allegations which are not actually lodged by [the victims]." However, you did not mark which portions of the summary the city wishes to withhold. Thus, this office has no basis upon which to make such a decision. Therefore, with the sole exception of the victims' and witnesses' identifying information, the summary must be released. See Gov't Code § 552.301(e)(2) (governmental body must label the information at issue to indicate which exceptions apply to which parts of the information).


body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 139173

Encl: Submitted documents

cc: Mr. Chuck Dent
c/o Mr. Michael Hernandez
Bracewell & Patterson L.L.P.
Attorneys at Law
800 One Alamo Center
106 S. St. Mary's Street
San Antonio, Texas 78205-3603
(w/o enclosures)